

ORDINANCE NO. 18334-10-2008

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF FORT WORTH (1986), AS AMENDED, CHAPTER 12.5, "ENVIRONMENTAL PROTECTION AND COMPLIANCE," ARTICLE IV "GROUNDWATER AND SURFACE WATER QUALITY," BY AMENDING APPENDIX "A" "MUNICIPAL SETTING DESIGNATION SITES IN FORT WORTH," BY THE ADDITION OF SECTION 16; DESIGNATING CFW-MSD-0016, PROVIDING FOR THE PROHIBITION OF THE USE OF GROUNDWATER FOR POTABLE AND IRRIGATION PURPOSES IN CFW-MSD-0016; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A FINE OF UP TO \$2,000.00 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Rodanco Partners, Ltd., (Applicant) has filed an application for support of a resolution seeking a Municipal Setting Designation for the site known as the 400 S. Jennings Avenue, Fort Worth, Texas, the metes and bounds description being attached hereto as Exhibit "A" (Site); and

**WHEREAS**, upon passage of a supporting resolution by the City Council, Applicant intends to file a separate application with the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for certification of a MSD for the Site pursuant to Texas Health and Safety Code, Chapter 361, Subchapter W; and

**WHEREAS**, Applicant has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the Site; and

**WHEREAS**, the City Council of the City of Fort Worth is of the opinion that it is in the best interest of the public to support Applicant's application to the Texas

Commission on Environmental Quality for a Municipal Setting Designation for the Site; and

**WHEREAS**, in order for the TCEQ to certify the Site the city must prohibit the potable use of groundwater from beneath the Site; and

**WHEREAS**, a public drinking water supply system exists that supplies or is capable of supplying drinking water to the Site, and property within one-half mile of the Site; and

**WHEREAS**, where public drinking water is available, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to human health;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

#### **SECTION 1.**

Chapter 12.5 "Environmental Protection and Compliance," Article IV, "Groundwater and Surface Water Quality," Appendix A, "Municipal Setting Designation Sites in Fort Worth," of the Code of the City of Fort Worth (1986) as amended, is hereby further amended by the addition of Section 16 to read as follows:

#### **APPENDIX A – MUNICIPAL SETTING DESIGNATION SITES IN FORT WORTH**

##### **CFW-MSD-0016**

- (a) CFW-MSD-0016 is defined as follows:  
Being a tract of land situated in the City of Fort Worth, Tarrant County, Texas and being Jennings South Addition, Lot 1-R, Block 36, said tract of land being more particularly described by metes and bounds description (Exhibit A) and map of CFW - MSD – 0016 (Exhibit B).

- (b) The designated groundwater beneath CFW-MSD-0016 is shallow, perched groundwater that occurs from grade to an approximate depth of twenty (20) feet below ground surface (bgs). The shallow groundwater unit is underlain by several limestone and clay formations that extend from approximately twenty (20) feet bgs to 350 or 400 feet bgs. These formations serve as a regional aquitard that prevent vertical migration of the chemicals of concern in the shallow groundwater to the underlying aquifers. The chemicals of concern identified in groundwater beneath the site exceeding applicable Tier 1 Texas Risk Reduction Program (TRRP) Residential Protection Concentration Levels (PCLs) include tetrachloroethylene (PCE), trichloroethylene (TCE) and vinyl chloride.
- (c) The use of the designated groundwater in CFW-MSD-0016 for potable and irrigation purposes is hereby prohibited. This prohibition is necessary because the contaminant concentrations exceed potable water standards.
- (d) The City will provide advance written notice to the Texas Commission on Environmental Quality, as much as is practicable, prior to enacting an ordinance repealing or amending this section.

## **SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

## **SECTION 3.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have

been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 4.**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

#### **SECTION 5.**

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended in Section 1, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 6.**

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption and Section 4 of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 2, Chapter XXV of the Charter of the City of Fort Worth, Texas and by Section 52.013, Texas Local Government Code.

#### **SECTION 7.**

This ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

APPROVED AS TO FORM AND LEGALITY:  
DAVID YETT, CITY ATTORNEY

Christa R. Reynolds  
By CHRISTA R. REYNOLDS  
ASSISTANT CITY ATTORNEY

Adopted: October 14, 2008

Effective: October 18, 2008

## **Exhibit A**

### **Bobby Cox Companies, Inc., MSD Metes and Bounds**

#### **11.976 Acre Tract**

BEING a tract of land situated in the S.G. JENNING S SURVEY, Abstract No. 844, W.B. TUCKER SURVEY, Abstract No. 1577 and the J.H. CHILDRESS SURVEY, Abstract No. 250 in the City of Fort Worth and being all of LOT I-R, BLOCK 36 of the JENNINGS SOUTH ADDITION, an addition to the City of Fort Worth as recorded in Cabinet B, Slide 931 of the Plat Records of Tarrant County, Texas (PRTCT) and being all of 4 tracts of land conveyed to RODANCO PARTNERS, LTD as recorded in Volume 14287, Page 293, Volume 15359, Page 190 and Document # . 0207401118 of the Deed Records of Tarrant County, Texas (DRTCT) and being a portion of WEST BROADWAY (40' Right-of-Way) and a portion of SOUTH JENNINGS STREET ( variable width Right-of-Way), WEST PETERSMITH (40' Right-of-Way) and GRAINGER (variable width Right-of-Way) and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found at the most north westerly corner of Tract 1 of said RODANCO PARTNERS, LTD tract as recorded in Volume 15359, Page 190 ( DRTCT ), said point being found in the southerly Right-of-Way line, said WEST BROADWAY;

THENCE departing the southerly Right-of-Way line of said WEST BROADWAY North 02 deg 12 min 00 sec east a distance of 40.00 feet to a point for corner in the northerly Right-of-Way line of said WEST BROADWAY;

THENCE along the northerly Right-of-Way line of said WEST BROADWAY South B7 deg 41 min 39 sec East passing though a Pk. Nail found at a distance of 55.41 feet and passing through the intersection of the northerly Right-of-Way line of said WEST BROADWAY and SOUTH JENNINGS STREET at a distance of 351.21 feet from which a Pk. Nail found bears South 00 deg 06 min 40 sec East a distance of 0.58 feet continuing in all a distance of 417.73 feet to a point for corner in the easterly Right-of-Way line of said SOUTH JENNINGS STREET;

THENCE along the easterly Right-of-Way line of said SOUTH JENNINGS STREET as follows:

South 00 deg 06 min 41 sec East a distance of 98.99 feet to a point for corner;

South 89 deg 53 min 02 sec East a distance of 8.70 feet to a point for corner;

South 00 deg 03 min 53 sec West a distance of 271.60 feet to a point for corner;

THENCE departing the easterly Right-of-Way line of said SOUTH JENNINGS STREET North 89 deg 23 min 10 sec West passing the westerly Right-of-Way line of said SOUTH JENNINGS STREET at a distance of 75.76 feet continuing in all a distance of 147.55 feet to a point for corner;

THENCE South 02 deg 29 min 49 sec west passing the northerly Right-of-Way line of said WEST PETERSMITH at a distance of 65.56 feet continuing in all a distance of 105.56 feet to a point for corner in the southerly Right-of-Way line of said WEST PETERSMITH;

THENCE along the southerly Right-of-Way line of said WEST PETERSMITH North 87 deg 41 min 39 sec West a distance of 288.10 feet to a point for corner;

THENCE departing the southerly Right-of-Way line of said WEST PETERSMITH North 02 deg 27 min 41 sec East passing the northerly Right-of-Way line of said WEST PETERSMITH at a distance of 40.00 feet, said point being the most southwesterly corner of Tract 2 conveyed to RODANCO PARTNERS LTD as recorded in Volume 15359, Page 190 (DRTCT) continuing in all a distance of 139.91 feet to a point for corner;

THENCE North 87 deg 42 min 33 sec West a distance of 5.02 feet to a point for corner;

THENCE North 02 deg 12 min 00 sec East a distance of 56.20 feet to the most northwesterly corner of said Tract 2;

THENCE South 87 deg 42 min 33 sec East a distance of 3.05 feet to the most southwesterly corner of a tract of land conveyed to RODANCO PARTNERS LTD recorded in Document # D 207401118 (DRTCT );

THENCE North 01 deg 20 min 52 sec East a distance of 46.75 feet to the most northwesterly corner of said tract RODANCO PARTNERS LTD recorded in Document # D 207401118 (DRTCT);

THENCE North 87 deg 42 min 33 sec West a distance of 2.37 feet to the most southwesterly corner of said Tract 1;

THENCE North 02 deg 12 min 00 sec East a distance of 197.02 feet to the POINT OF BEGINNING.

**Exhibit B**  
**Rodanco Partners, Ltd., MSD**  
**4.391 Acre Tract**





*City of Fort Worth, Texas*  
**Mayor and Council Communication**

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**COUNCIL ACTION: Approved on 10/14/2008 - Res. No. 3668-10-2008 & Ord. No. 18334-10-2008**

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**DATE:** Tuesday, October 14, 2008

**LOG NAME:** 52MSD S&B TECH

**REFERENCE NO.: G-16322**

**SUBJECT:**

Adopt Resolution Supporting the Application of S&B Technical Products, Inc., for a Municipal Setting Designation for Property at 1300 East Berry Street to the Texas Commission on Environmental Quality; Adopt Ordinance Prohibiting the Potable Use of Designated Groundwater

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**RECOMMENDATION:**

It is recommended that the City Council:

1. Conduct a public hearing on the application of S&B Technical Products, Inc., for approval of a Municipal Setting Designation for the property located at 1300 East Berry Street, an approximately 28 acre tract, more fully described as G.W Hartzog Survey, Abstract 697, W.R. Loving Survey, Abstract 748, Fort Worth, Tarrant County, Texas, to allow the public the opportunity to give testimony;
2. Adopt the attached resolution supporting the Applicant's application to the Texas Commission on Environmental Quality for a Municipal Setting Designation for the site; and
3. Adopt the attached ordinance prohibiting the potable use of designated groundwater from beneath the site.

**DISCUSSION:**

In 2003, a state law became effective creating the concept of a Municipal Setting Designation (MSD). The purpose of an MSD is to certify properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by municipal ordinance. A person, typically a developer, must apply to the Texas Commission on Environmental Quality (TCEQ) for certification of their property as an MSD. If granted, they will not be required to clean up designated groundwater on their site to drinking water standards, although other cleanup standards such as inhalation and contact must still be met. The application will not be approved by the TCEQ if the municipality where the site is located does not give formal approval. That approval must be by means of a City Council resolution supporting the application and an ordinance prohibiting potable use of groundwater in the MSD (potable water is water used for irrigating crops intended for human consumption, drinking, showering, bathing or cooking purposes).

In January 2005, City Council adopted an ordinance creating a procedure for persons applying to the TCEQ for an MSD, to get support of that application from the City Council. The procedure includes filing an application with the City, staff review of the application for potential impacts to City interests, a public meeting held for the purpose of providing information on the application to the affected community, and a public hearing.

On August 21, 2008, S&B Technical Products, Inc., filed an application with the City seeking support of an

MSD at 1300 East Berry Street, Fort Worth, Texas.

Staff from the departments of Engineering, Environmental Management, Planning and Development, Transportation and Public Works, and Water reviewed the application for potential impacts to City interests. No significant concerns were identified. Notice was issued as required by ordinance, and a public meeting was held at the Tarrant County Public Health Department on October 8, 2008. Two representatives of the Applicant, two City staff members and one Fort Worth City Council Member were present. Ten residents of Fort Worth and surrounding cities were in attendance. Comments made at the meeting do not adversely impact staff's recommendation to approve this MSD.

The groundwater to be restricted is shallow, perched groundwater that occurs at depths of three feet below ground surface (bgs) down to the top of the underlying, confining limestone layer that occurs at a depth of approximately 20 feet bgs. The affected shallow groundwater is not a designated, recognized major or minor aquifer. The predominant chemical of concerns detected in the groundwater are benzene, total petroleum hydrocarbons (TPH), tetrachloroethylene (PCE), trichloroethylene (TCE), dichloroethene (DCE), cis-1,2-dichloroethene (CDCE), trans 1,2-dichloroethene (TDCE), 1,1-dichloroethane (1,1 DCA), 1,2-dichloroethane (1,2 DCA) and vinyl chloride.

The Fort Worth Water Department provides water service to all existing residential and commercial/industrial properties within the City limits of the City of Fort Worth, within one-half mile of the MSD boundary. All undeveloped properties (within the City limits of the City of Fort Worth) within one-half mile of the site are eligible to receive water service from the Fort Worth Water Department in accordance with the Texas Water Service Certificate of Convenience and Necessity (CCN) No. 12311 (City of Fort Worth) and the City of Fort Worth Policy for the Installation of Community Services. There are no other cities within one-half mile of the MSD boundary.

The site is located in COUNCIL DISTRICT 8.

**FISCAL INFORMATION/CERTIFICATION:**

The Financial Management Services Director certifies that this action will have no material effect on City funds.

**TO Fund/Account/Centers**

**FROM Fund/Account/Centers**

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**Submitted for City Manager's Office by:**

Charles Daniels (6183)

**Originating Department Head:**

Brian Boerner (6647)

**Additional Information Contact:**

Michael Gange (6569)

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